

# Exhibit 21

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)

Debtors.

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VIDEOTAPE DEPOSITION OF JAMES WHITLINGER

New York, New York

November 15, 2012

9:39 a.m.

Reported by:

ERICA L. RUGGIERI, RPR

JOB NO: 27649

November 15, 2012

9:39 a.m.

Deposition of JAMES WHITLINGER,  
held at the offices of Kramer, Levin,  
Naftalis & Frankel, 1177 Avenue of the  
Americas, New York, New York, pursuant  
to Notice, before Erica L. Ruggieri,  
Registered Professional Reporter and  
Notary Public of the State of New  
York.

1 JAMES WHITLINGER

2 Q. But you don't have a specific  
3 recollection of discussing the board's  
4 fiduciary duties during the half an hour  
5 or so that the board discussed the  
6 settlement agreement on May 9th?

7 A. Yeah, I -- I don't recall  
8 specific to that.

9 Q. And on May 9th as a board member  
10 when you were considering the settlement,  
11 in your own words what was your  
12 understanding of your fiduciary duty as a  
13 ResCap board member in deciding whether to  
14 approve the settlement agreement?

15 A. Generally speaking, you know, as  
16 a director we have a duty of care and duty  
17 of loyalty to ResCap and all its  
18 affiliates or subsidiaries. And we needed  
19 to consider all creditors when making any  
20 decision that we would make at all, you  
21 know, that that's part of that -- that  
22 process. So.

23 Q. So you understood on May 9th  
24 that you had a fiduciary duty of care and  
25 loyalty -- loyalty to ResCap and all of

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2 its creditors during that meeting?

3 A. Yes. And to ResCap's  
4 subsidiaries.

5 Q. Just to be clear, your answer to  
6 the question was "Yes. And to ResCap's  
7 subsidiaries"?

8 A. Yes.

9 Q. And did that fiduciary duty  
10 extend to the creditors of not just ResCap  
11 but also ResCap's subsidiaries?

12 A. Yes.

13 Q. If a conflict arose during the  
14 May 9th board meeting between the best  
15 interests of ResCap's different  
16 subsidiaries or the different creditors of  
17 those different subsidiaries, what was  
18 your understanding of how the board was  
19 supposed to resolve that conflict?

20 MR. RAINS: I object to the  
21 question on the grounds that it's a  
22 hypothetical and it assumes facts not  
23 in evidence and so it will cause you  
24 to speculate.

25 If you can answer the question,

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2 dialogue had been occurring with parties.

3 So that process to further vet and discuss

4 how legal entities to your question would

5 be allocated was subsequent conversations

6 that took place and subsequent -- and

7 manifested in subsequent agreements.

8 Q. So do I understand correctly

9 that on May 9th when the board approved

10 the settlement agreement it had not been

11 fully determined the extent to which any

12 of the \$8.7 billion in claims would be

13 allowed against RFC or GMAC Mortgage or

14 ResCap itself, is that true?

15 A. I don't recall the exact

16 conversation that we had but the maximum

17 claim across all entities at that point in

18 time was 8.7. I think there were

19 presumably some beliefs that based on the

20 entity that did the issuance, the claims

21 would align potentially there. And that's

22 what manifested itself in some other

23 conversations to try and get that more

24 definitive so that people understood where

25 would the claims be brought forth.

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2 Q. And those conversations and the  
3 sorting of that out occurred after  
4 May 9th, right?

5 A. Yes.

6 Q. So on May 9th when the board  
7 approved the settlement agreement, it did  
8 not know the extent to which either RFC or  
9 GMAC Mortgage or ResCap might have an  
10 allowed claim, a portion of the  
11 8.7 billion allowed claim against each of  
12 those different entities?

13 A. Again, in total 8.7 billion was  
14 a claim. All entities were released and,  
15 you know, between the expert and  
16 subsequent conversations how those claims  
17 were allocated were -- were part of what  
18 was being worked out.

19 Q. Wasn't it important for you and  
20 the board to -- to decide before you  
21 approved the settlement agreement how  
22 those claims would be allocated among the  
23 different ResCap affiliates?

24 A. I would tell you everything is  
25 important on working out the \$8.7 billion

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2 including Mr. Marano and Mr. Mack?

3 A. No.

4 Q. Before your deposition today did  
5 you discuss with anyone what anyone else  
6 had testified to in depositions in this  
7 matter, including testimony by Mr. Marano  
8 or Mr. Mack or Mr. Cancelliere?

9 A. No.

10 MR. SIEGEL: Let's take a break.

11 MR. RAINS: All right.

12 THE VIDEOGRAPHER: The time is  
13 12:57 p.m. and we are off the record.

14 (Whereupon, there is a recess in  
15 the proceedings.)

16 THE VIDEOGRAPHER: The time is  
17 1:08 p.m. and we are back on the  
18 record.

19 EXAMINATION BY

20 MR. DENMAN:

21 Q. Mr. Whitlinger, I'm Harrison  
22 Denman from White & Case for the ad hoc  
23 group of junior secured noteholders.  
24 Earlier you mentioned you are both an  
25 officer and a director for Residential



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2 Capital LLC and for GMAC Mortgage LLC,  
3 correct?

4 A. Yes.

5 Q. And do you also hold positions  
6 at Residential Funding Company, LLC?

7 A. Residential Funding I'm also a  
8 board member and a chief financial officer  
9 as Craig had asked.

10 Q. Okay. And can you identify the  
11 other members of the board for GMAC  
12 Mortgage?

13 A. Steve Abreu and, you know, Joe  
14 Pensabene, who is the head of our  
15 servicing is currently a -- and is also a  
16 board member.

17 Q. And is the same individuals that  
18 are members of the board of Residential  
19 Funding Company?

20 A. I believe it's only Steve Abreu  
21 and myself for -- for RFC.

22 Q. And earlier you said that you  
23 don't recall there being any meetings of  
24 the board of GMAC Mortgage with respect to  
25 the RMBS settlement, correct?

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2 A. Correct.

3 Q. And do you recall if there were  
4 any such meetings of the board by -- of  
5 the board for Residential Funding Company?

6 A. No. I would say the same, I  
7 don't recall.

8 Q. Being that you are one of only  
9 two, or in the case of GMAC Mortgage  
10 three, directors for each entity you would  
11 obviously -- your attendance would be  
12 necessary for any board meeting of those  
13 two entities, correct?

14 A. Yes.

15 Q. So it's safe to assume that your  
16 not recalling means that those meetings  
17 never occurred?

18 MR. RAINS: Objection.

19 Misstates his testimony.

20 A. I don't -- I don't recall having  
21 a meeting and I don't believe we had a  
22 separate meeting but I don't -- I don't  
23 re- -- I don't recall.

24 Q. Okay. Now, you attended the  
25 May 9th board meeting, correct?

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2 A. Yes.

3 Q. And that was a board meeting for  
4 Residential Capital LLC, correct?

5 A. Yes.

6 Q. And your attendance there was in  
7 your capacity as officer and director of  
8 Residential Capital LLC, correct?

9 A. Yes. But I was also there with  
10 respect to the plan support agreement that  
11 all the debtor entities were listed as  
12 part of the plan support agreement. So --  
13 so I was also considering the other  
14 entities in my decision.

15 Q. But only with respect to the  
16 plan support agreement because that was  
17 the agreement to which those entities were  
18 parties?

19 A. That's -- that's correct.

20 Q. Was it customary for you to  
21 attend a board meeting for one entity and  
22 make decisions that related to the affairs  
23 of another entity at that meeting?

24 A. I would say this, you know,  
25 generally speaking, because RFC and GMAC

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2 Mortgage are guarantors to many of the  
3 facilities that we have that we're --  
4 we're always thinking about all the -- the  
5 entities that are -- that are subsidiaries  
6 of the company.

7 Q. So do those subsidiary entities  
8 ever have board meetings?

9 A. We do -- we do occasionally have  
10 board meetings, you know, that -- that,  
11 you know, that I would generalize as  
12 things that are specific to that entity  
13 for maybe a state licensing issue.

14 Q. Okay. Earlier you mentioned  
15 that the \$8.7 billion allowed claim --  
16 well, let me put it different.

17 What was your understanding with  
18 respect to the entities that would be  
19 liable for the \$8.7 billion claim as of  
20 the May 9th?

21 A. My understanding that at that  
22 point in time all the entities were part  
23 of the release and that the claim,  
24 generally speaking, would be allocated  
25 based on where the loans were at by the